

George Earl of *Huntingdon* Appellant.

Frances Countess Dowager of *Huntingdon*,

Theophilus and } *Hastings*,
Ferdinando

The Ladies *Anne*,
Frances,
Catherine, and } *Hastings*,
Margaret

Younger Children of
Theophilus late Earl
of *Huntingdon*, being
Infants by the said
Countess their Mo-
ther and Guardian.

Respondents.

John Gery Doctor of Laws, Executor of the last
Will and Testament of the said *Theophilus* late
Earl of *Huntingdon*; and Sir *Philip Meadows* Kt.

The Respondents CASE.

Theophilus late Earl of *Huntingdon* Father of the Appellant, and of the Respondents the Infants, upon the Marriage of Countess *Elizabeth* his first Wife, so settled his whole Estate, as he thereby became barely Tenant for Life, with Power only to raise Portions for their younger Children.

25 November
1681.

And the said Countess *Elizabeth*, and the said Earl in her Right, being also seized (*inter al.*) of the Lands in question, on the 25th of November 1681. settled those Lands also to the use of Countess *Elizabeth* for her Life, Remainder to the Appellant their Son in Tail Male, with other

1st August
1682.

Remainders over: But with a Power to the said Earl and Countess during their joint Lives to revoke and limit new Uses. Such Settlements having been made, and the said Earl and Countess having occasion to borrow 4500*l.* the said Countess agreed the same should be raised out of her said Estate. And for that purpose the said Earl and Countess on the 1st of August 1682. (pursuant to their Power) revoked the Uses of the Settlement of November 1681. as to the Premises in question, and made a Mortgage thereof to one *Cropper* for a Term of 1000 Years, for the securing the Repayment of 4500*l.* and Interest, and (subject to the said Mortgage) relimited the Estate to the same Uses.

2d January
1683.

On the 2d of January 1683. the said *Cropper*, together with the said Earl and Countess, assigned the Mortgage Term of 1000 Years to Mr. *Newport* and Sir *William Cooper*, under an Agreement or Proviso, that if the said Earl and Countess or either of them paid the 4500*l.* and Interest, the Term of 1000 Years should be assigned to the said Earl and Countess, or to one of them, or as THEY or EITHER OF THEM should appoint.

11th February
1687.

The said late Earl having afterwards advanced and paid the said 4500*l.* to the Mortgagees: And to the intent that he might be reimbursed the same as his Occasions should require, took care to have the Mortgage Term assigned and kept on foot, and on or about the 11th of February 1687. the same by Measn Assignments vested in Sir *John Foach* and Sir *Philip Meadows*, in Trust for the said Earl, his Executors, Administrators or Assigns.

24th Decemb.
1688.

On the 24th of December 1688. the said Countess *Elizabeth* died, and the said late Earl continued the possession of the Premises in question, applying part of the Profits towards the Appellant's Maintenance, and the Residue thereof towards Payment of the Debt secured by the said Mortgage, and constantly all his Life kept exact and regular Accompts of what was received and paid out of the mortgaged Premises by way of Debtor and Creditor.

11th April
1698. Will.

The said Earl having six younger Children to be provided for out of his personal Estate (of which the Money secured by the said Mortgage was the Chiefest part) on the 11th of April 1698. made his Will, and thereby devised the said Mortgage and all his personal Estate to the Respondent Dr. *Gery* his Executor, in Trust for his six younger Children the other Respondents, and shortly afterwards died.

Michaelmas
Term 1701.
Bill.

Shortly after his Decease the now Appellant, in the Infancy of the younger Children the Respondents, was pleased to enter and take possession of the mortgaged Premises, altho the greatest part of the Mortgage Money remained unsatisfied; and in Michaelmas Term 1701. exhibited his Bill in Chancery, thereby demanding not only an Assignment of the Mortgage Term without payment of what remained due thereon; but also that his said late Father's Executor might refund what Profits had been received by the late Earl after the Death of Countess *Elizabeth*, and deliver to him a Jewel of 1000*l.* value, alledged to have been deposited with the late Earl in Trust for the Appellant.

12th May
1702. Decree.

To which Bill the Respondents having answered, the Cause (after Examination of Witnesses, and Publication passed) on the 12th of May, 1702. receiv'd a Hearing before the Lord Keeper, who decreed an Account to be taken of what Rents and Profits had been received by the late Earl out of the Mortgaged Premises since the Death of Countess *Elizabeth*; and the same after a reasonable Allowance thereout made for the Appellant's Maintenance and Education, and other just Allowances, were to be applied towards Discharge of the said Mortgage; and on Payment of what should appear to be remaining due thereon to Doctor *Gery* in Trust for the Respondents the Infants, the Mortgage was to be assigned to the now Earl, or as he should appoint, and the Jewel was to be delivered to him.

The Appellant has thought fit so far to approve of the Decree, as to take the Jewel thereby directed to be delivered to him, but refuses to enter into the Account touching the Mortgage; but would exact an Assignment thereof without Payment of what remains due thereon: and for that purpose has appealed from the said Decree, pretending that the late Earl having paid the Money due to the Mortgagees, such Payment was made in favour of the Appellant, and ought to redound to his Benefit, and was either so intended by the Late Earl, or ought to be so construed in Equity; the said Late Earl (as is pretended) having made the said Countess some Promise so to do.

Whereas the said late Earl was no way obliged or compellable to discharge the Land of the said Debt; nor did Countess *Elizabeth*, when she agreed to mortgage the Premises to raise the 4500*l.* desire or insist on any Covenant or Agreement for that purpose.

But on the contrary, on the Assignment of the Mortgage in January, 1683. it's expressly agreed, That on Payment of the 4500*l.* the Mortgage Term should be assigned to the said Late Earl and Countess *Elizabeth*, or as THEY, or EITHER OF THEM should direct.

And the said Late Earl was so far from intending to exonerate the Land by such Payment, that he not only took care to have the Mortgage assigned and kept on foot, but also, looking upon himself as a Creditor for the Money so advanced by him, constantly from the Death of Countess *Elizabeth* kept regular and exact Accounts of his Receipts and Payments relating to the mortgaged Premises. And not only so, but whereas the now Appellant, in the Life-time of the Late Earl his Father, claimed the Estate in question as belonging to him upon the Decease of Countess *Elizabeth* his Mother, the said Late Earl oppos'd the same, and to his dying Day insisted on his Right and Title by virtue of the said Mortgage, and Assignments thereof made as aforesaid.

And since it was certainly as lawful for the said Late Earl to lay down the Money and take an Assignment of the Mortgage, as it would have been for any other Person to do the same, it's reasonable he should have the like Benefit thereof to reimburse what he paid on such Assignment, as a Stranger might have had.

Nor hath the Appellant any reason to complain thereof, nor doth he sustain any Loss or Damage thereby, being to make good to the Late Earl's Estate but the like Sum as he must have paid to any other ASSIGNEE of the Mortgage: And in truth he gained an Advantage thereby, his Father having permitted great part of the Profits to be applied to his Maintenance and Education; which if a Stranger had taken an Assignment of the Mortgage might have been denied.

And since the said Late Earl has thought fit to leave the Money due on the said Mortgage, as a Provision for his six younger Children, who have very slender Fortunes, and but a narrow Subsistence, the Respondents humbly hope your Lordships will see no cause to reverse or alter, but will be pleas'd to ratify and confirm the said Decree, which hath been already in part executed as aforesaid.

T. Vernon.